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Attorneys for MACKENZIE ANNE THOMA, on behalf of herself and all others similarly situated

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MACKENZIE ANNE THOMA,  
a.k.a. KENZIE ANNE, an  
individual and on behalf of all  
others similarly situated.

**Plaintiff.**

V.

VXN GROUP, LLC, a Delaware limited liability company; MIKE MILLER, an individual; and DOES 1 to 100, inclusive.

### Defendants.

Case No. 2:23-cv-04901 WLH (AGRx)

**JOINT APPENDIX OF FACTS  
REGARDING VZN GROUP, LLC and  
MIKE MILLER'S MOTION FOR  
SUMMARY JUDGMENT**

[Filed concurrently with: (1) Notice of Motion and Motion for Summary Judgment; (2) Joint Brief; (3) Joint Appendix of Evidence (Vol. I-IV); (4) Joint Appendix of Objections; and (5) Proposed Order]

Date: February 28, 2025

Time: 11:00 a.m.

## Courtroom: 9B

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JOINT APPENDIX OF FACTS RE: DEFENDANTS' MSJ

28

No.	Defendants' Statement of Facts	Supporting Evidence	Plaintiff's Response
Plaintiff is exempted under Wage Order 12's Professional Actor Exemption			
1	VXN Group, LLC (“VXN”) produces motion pictures.	Declaration of Emilie Kennedy (Ex. 1 – “Kennedy Decl.”) ¶¶ 6–8; Exs. 2–6; Declaration of Belen Burditte (Ex. 18 – “Burditte Decl.”), ¶ 6; Ex. 19.	Disputed.  This statement is misleading. VXN produced motion pictures but also produced still photographs separate from their motion pictures; Exhibits 23 and 26 explicitly state the Defendants are contracting with Plaintiff for acting <i>and</i> modeling services and described Defendants as a company who sells both motion pictures and photographs for profit; Exhibit 62 shows Plaintiff modeling in several photos with no relation to filming; Exhibit 52 145:21–25 and 146:1–9 show

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1			Plaintiff testifying she took photos during most of her shoot days without being filmed.
2	VXN's films are widely distributed across various media platforms.	Kennedy Decl., ¶ 6.	Undisputed.
3	VXN's films are registered as motion pictures with the U.S. Copyright Office.	<i>Id.</i> , ¶ 4, Ex. 2.	Undisputed.
4	Plaintiff acted in 18 VXN films.	<i>Id.</i> , ¶ 9.	Disputed. Defendants do not adequately define the term "acted." Plaintiff both modeled and acted. Exhibits 23 and 26 explicitly state the Defendants are contracting with Plaintiff for acting <i>and</i> modeling services and described Defendants as a company who sells both motion pictures and photographs for profit; Exhibit 62 shows

1			Plaintiff modeling in several photos with no relation to filming; Exhibit 52 145:21-25 and 146:1-9 show Plaintiff testifying she took photos during most of her shoot days without being filmed.
5	VXN paid Plaintiff the relevant contractual amount following the completion of Plaintiff's performance in each scene.	<i>Id.</i> , ¶ 10; Ex. 18, Declaration of Belen Burdette (Ex. 18 – “Burdette Decl.”) ¶¶ 18–19; Ex. 21.	Disputed to the extent the terms “relevant contractual amount” and “related” is unclear and unsupported by evidence.
6	Plaintiff played a featured role in each VXN film.	Kennedy Decl. ¶¶ 4,9; Exs. 4, 14– 16.	Disputed to the extent “featured” is unclear.
7	Plaintiff had a speaking role in each film.	Kennedy Decl. ¶ 4.	Undisputed.
8	VXN takes photographs	Declaration	Disputed.

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1	as part of the filmmaking	of Basia Lew	This statement is
2	process (“stills”).	(Ex. 10 –	misleading as VXN
3		“Lew	takes photographs
4		Decl.”), ¶ 8;	separate and apart from
5		Ex. 11; Exs.	live action filming to
6		14–16; Ex.	promote the VXN brand
7		29, Murphy	in general. Exhibits 64
8		Dep., at	and 66 explicitly state
9		87:4-8.	the Defendants are
10			contracting with Plaintiff
11			for acting <i>and</i> modeling
12			services and described
13			Defendants as a
14			company who sells both
15			motion pictures and
16			photographs for profit;
17			Exhibit 62 shows
18			Plaintiff modeling in
19			several photos with no
20			relation to filming;
21			Exhibit 52 145:21-25
22			and 146:1-9 show
23			Plaintiff testifying she
24			took photos during most
25			of her shoot days
26			without being filmed;
27			Exhibit 64 is Plaintiff’s

1			Declaration where she once again testifies she modeled in situations that had nothing to do with filming.
2			
3			
4			
5			
6	9	VXN's stills are not separately registered with the U.S. Copyright Office.	Kennedy Decl. ¶ 4.
7			Undisputed.
8			
9			
10	10	VXN's films have won many awards.	Kennedy Decl. ¶¶ 8, 11.
11			Undisputed.
12			
13	11	VXN is comprised of several departments engaged in the filmmaking process.	Lew Decl., ¶ 4.
14			Disputed.
15			This statement is misleading as VXN's business is not limited to mere "filmmaking."
16			Exhibits 23 and 26 explicitly state the Defendants are contracting with Plaintiff for acting <i>and</i> modeling services and described Defendants as a company who sells both motion pictures and photographs for profit;
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27			5
28		JOINT APPENDIX OF FACTS RE: DEFENDANTS' MSJ	

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1			Exhibit 62 shows Plaintiff modeling in several photos with no relation to filming; Exhibit 52 145:21-25 and 146:1-9 show Plaintiff testifying she took photos during most of her shoot days without being filmed; Exhibit 64 is Plaintiff's Declaration where she once again testifies she modeled in situations that had nothing to do with filming.
17	12	VXN's workers compensation insurance provider classifies VXN as a "motion picture production company."	Burdette Decl., ¶ 6; Ex. 19
19	13	VXN's workers compensation insurance classified Plaintiff as an "actor".	Ex. 19
25	14	VXN's Statement of	Ex. 6

1	Information lists its “type 2 of business” as “film 3 production.”		
4	15 VXN owns state-of-the- 5 art motion picture 6 production equipment.	Lew Decl., ¶ 7.	Undisputed.
8	16 VXN regularly obtains 9 film permits.	<i>Id.</i> , ¶ 7	Disputed to the extent 10 that none of the film 11 permits were ever 12 produced, and no 13 evidence of the 14 production of these 15 permits has ever been 16 produced.
17	17 VXN rents expensive film locations.	<i>Id.</i> , ¶ 7	Disputed to the extent 18 that these locations are 19 <i>not</i> just used to film, but 20 also take still 21 photographs. Exhibits 23 22 and 26 explicitly state 23 the Defendants are 24 contracting with Plaintiff 25 for acting <i>and</i> modeling services and described Defendants as a company who sells both

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1			motion pictures and photographs for profit; Exhibit 62 shows Plaintiff modeling in several photos with no relation to filming; Exhibit 52 145:21-25 and 146:1-9 show Plaintiff testifying she took photos during most of her shoot days without being filmed; Exhibit 64 is Plaintiff's Declaration where she once again testifies she modeled in situations that had nothing to do with filming. Exhibit 49 contains additional deposition excerpts from Ms. Lew, and on 61:4-9 Ms. Lew confirms that still photography would also be taken at these locations.
18	VXN uses stills to rehearse film scenes.	<i>Id.</i> , ¶ 9	Undisputed.

1	19	VXN uses stills to determine the visual look of the movie.	<i>Id.</i> , ¶ 9; Ex. 8, Lew Dep. at 64:15–65:9.	Undisputed.
2	20	VXN stills are used for marketing and advertising purposes.	<i>Id.</i> , ¶ 12; Ex. 8, Lew Dep. at 64:15–65:9, 81:18–82:9; 162:4–12.	Undisputed.
3	21	VXN stills are not commercially sold separate from VXN's films.	Kennedy Decl. ¶ 4; Ex. 8, Lew Dep., at 81:18–82:9, 168:22-24.	Disputed.  VXN charges all of their subscribers a subscription fee. Access to the “stills” are not free. Exhibit 49 82:12-13 confirms the subscriptions are not free and Exhibit 49 62:5-9 confirms only members can access these scenes.
4	22	Production of VXN stills accounts for only a small portion of the time spent making the motion picture.	Ex. 8, Lew Dep., at 58:24–61:4; Lew Decl., ¶ 13; Ex. 17.	Disputed. Lew deposition does not make any such representations. These facts are not found

1	within this evidence.
2	Further, Plaintiff
3	testified that she spent 6
4	amount of hours posing
5	for still photos before the
6	commencement filming
7	live scenes. Exhibits 64
8	and 66 explicitly state
9	the Defendants are
10	contracting with Plaintiff
11	for acting <i>and</i> modeling
12	services and described
13	Defendants as a
14	company who sells both
15	motion pictures and
16	photographs for profit;
17	Exhibit 62 shows
18	Plaintiff modeling in
19	several photos with no
20	relation to filming;
21	Exhibit 52 145:21-25
22	and 146:1-9 show
23	Plaintiff testifying she
24	took photos during most
25	of her shoot days
26	without being filmed;
27	Exhibit 64 is Plaintiff's
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1			Exhibit 12 contains Defendants' slack messages discussing scripting and scene changes without the consultation of Plaintiff.
2	25	Plaintiff retained the right to approve her physical appearance in the films.	Ex. 8, Lew Dep., at 101:7-14; Ex. 40.
3			Disputed. Plaintiff could not modify her appearance without Defendants express written consent, as Defendants retained the right to terminate Plaintiff if her appearance changed.
4			Exhibit 64 is the Performance Agreement signed on November 11, 2020 and it specifically states that “[Plaintiff] understands that [Defendants] is entering into this Agreement with [Plaintiff] based on [Plaintiff’s] current physical appearance, including measurements
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1	of [Defendants'] body,
2	level of physical fitness,
3	hairstyle, and overall
4	appearance of
5	[Plaintiff's] body.
6	During the term of this
7	Agreement, [Plaintiff]
8	will maintain
9	[Plaintiff's] physical
10	appearance, and
11	[Plaintiff] will submit
12	reasonable requests of
13	[Defendants]...[Plaintiff]
14	acknowledges that if
15	[Plaintiff] should change
16	her physical appearance
17	during the term of the
18	Agreement (including
19	adding or subtracting
20	tattoos or piercings)
21	without first obtaining
22	written permission by
23	[Defendants],
24	[Defendants] may
25	terminate this Agreement
26	for Cause..." Exhibit 66
27	is the Performance
28	

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1	Agreement signed on
2	July 13, 2021 that states
3	Plaintiff is a “[Plaintiff]”
4	understands that
5	[Defendants] is entering
6	into this Agreement with
7	[Plaintiff] based on
8	[Plaintiff’s] current
9	physical appearance,
10	including measurements
11	of [Defendants’] body,
12	level of physical fitness,
13	hairstyle, and overall
14	appearance of
15	[Plaintiff’s] body.
16	During the term of this
17	Agreement, [Plaintiff]
18	will maintain
19	[Plaintiff’s] physical
20	appearance, and
21	[Plaintiff] will submit
22	reasonable requests of
23	[Defendants]...[Plaintiff]
24	acknowledges that if
25	[Plaintiff] should change
26	her physical appearance
27	during the term of the

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1		Exhibit 1, Ex 29.	projects individuals are not in. Exhibit 29; 714:- 11
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5	28	Plaintiff received notice from SAG-AFTRA that she is eligible to join that union.	Ex. 28, Thoma Dep., at 84:7–85:5.
6			
7			
8			
9	29	During the Contract Period, Plaintiff won 4 awards connected with her appearances in VXN films.	Kennedy Decl. ¶ 11
10			
11			
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13			
14	30	During the Contract Period, Plaintiff won 7 awards connected with her appearances in non- VXN films.	Kennedy Decl. ¶ 11
15			
16			
17			
18			
19	31	Plaintiff posted the stills on her social media.	Ex. 8, Lew Dep., at 104–106.
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27	32	Vixen Angel is an honorary title bestowed by VXN on star actresses.	Kennedy Decl. ¶ 12
28			Disputed. Vixen Angels are not just actresses; but to “iconic artists.” Plaintiff was awarded the title and she was not just an actress. Exhibit

1			54 is an excerpt from Defendants' "Vixen Angel" website that states Vixen Angels are "iconic artists that break down walls and defy stereotypes." Exhibit 51 is the Declaration of Rafael Yedoyan which states when and how the website was accessed, including the URL that leads to this webpage.
14	33	VXN planned to announce Plaintiff as a Vixen Angel.	Kennedy Decl. ¶ 12
15	34	Plaintiff testified that she transitioned from a model to an adult actress to have a more relevant appearance.	Ex. 28, Thoma Dep., at 23:20-21.
16	35	Plaintiff's talent agent, Ryan Murphy ("Murphy")	Murphy Dep., 67:18–
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1	testified that all of his	20. Ex. 29	
2	clients considered		
3	themselves professional		
4	actresses.		
5			
6	36 The IWC adopted the	Ex. 9. p. 4	Undisputed
7	“professional actor”		
8	exemption in 1957.		
9			
10	37 The IWC considered the	Ex. 9 p. 194	Undisputed
11	term “professional actor”		
12	“well known to those in		
13	the industry.”		
14			
15	38 The IWC used the	<i>Id.</i>	Disputed. The IWC
16	“professional actor” term		distinguished
17	to distinguish featured		“professional actors,”
18	actors from extra-players.		from “actors,” from
19			“extra-players.” Exhibit
20			9, Page 16
21			
22	Plaintiff is an Independent Contractor		
23			
24	39 Plaintiff’s relationship	Brown	Undisputed.
25	with VZN was governed	Decl., Exs.	
26	by two contracts, each	23, 24, and	
27	amended by an addendum	26.	
28	(the “Agreements”).		
29			
30	40 Plaintiff’s talent agents	<i>Id.</i> , Ex. 25,	Undisputed.
31	negotiated the	Thoma Dep.,	
32		at 88:14–	
33			

1	Agreements on her behalf.	90:20.	
2	41 The Agreements identify Plaintiff as an independent contractor.	<i>Id.</i> , Exs. 23 and 26, at ¶12.	Undisputed.
3	42 VZN paid Plaintiff on a per-scene basis.	<i>Id.</i> , Exs. 23, 26, at ¶2.; Burditte Decl., at ¶19.	Undisputed.
4	43 Before each scene, Plaintiff submitted a form W-9 to VZN.	Brown Decl., Ex. 44, Lew Dep., at 132:2-7.	Undisputed.
5	44 Plaintiff submitted W-9s identifying Plaintiff individually, Kenzieland LLC, and Lola March LLC as payees.	<i>Id.</i> at Ex. 44.	Undisputed.
6	45 VZN issued Plaintiff Form 1099s for each year during the Contract Period.	Burditte Decl., Ex. 20.	Undisputed.
7	46 Plaintiff never received a Form W-2 from VZN.	Brown Decl., ¶18.	Undisputed.
8	47 The Agreements required	<i>Id.</i> , at Ex. 23	Disputed. The

1	Plaintiff to maintain her physical appearance in accordance with VXN's "reasonable personal grooming requests[.]"	at ¶17.2, Ex. 26, at ¶17.2.	Agreements required Plaintiff to maintain her personal appearance more than just with "reasonable personal grooming requests[.]"
2	(“Appearance Requirements”)		The Agreements managed Plaintiff's weight, body measurements, and whether she could get tattoos or piercings, for example. Exhibit 64 is the Performance Agreement signed on November 11, 2020 and it specifically states that “[Plaintiff] understands that [Defendants] is entering into this Agreement with [Plaintiff] based on [Plaintiff’s] current physical appearance, including measurements of [Defendants’] body, level of physical fitness,

1	hairstyle, and overall
2	appearance of
3	[Plaintiff's] body.
4	During the term of this
5	Agreement, [Plaintiff]
6	will maintain
7	[Plaintiff's] physical
8	appearance, and
9	[Plaintiff] will submit
10	reasonable requests of
11	[Defendants]...[Plaintiff]
12	acknowledges that if
13	[Plaintiff] should change
14	her physical appearance
15	during the term of the
16	Agreement (including
17	adding or subtracting
18	tattoos or piercings)
19	without first obtaining
20	written permission by
21	[Defendants],
22	[Defendants] may
23	terminate this Agreement
24	for Cause..." Exhibit 66
25	is the Performance
26	Agreement signed on
27	July 13, 2021 that states
28	

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1			Plaintiff is a “[Plaintiff] understands that
2			[Defendants] is entering into this Agreement with
3			[Plaintiff] based on
4			[Plaintiff’s] current
5			physical appearance,
6			including measurements
7			of [Defendants’] body,
8			level of physical fitness,
9			hairstyle, and overall
10			appearance of
11			[Plaintiff’s] body.
12			During the term of this
13			Agreement, [Plaintiff]
14			will maintain
15			[Plaintiff’s] physical
16			appearance, and
17			[Plaintiff] will submit
18			reasonable requests of
19			[Defendants]...[Plaintiff]
20			acknowledges that if
21			[Plaintiff] should change
22			her physical appearance
23			during the term of the
24			Agreement (including
25			adding or subtracting
26			

1	2	3	tattoos or piercings) 4 without first obtaining 5 written permission by 6 [Defendants], 7 [Defendants] may 8 terminate this Agreement 9 for Cause...”
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18	48	One purpose of the Appearance Requirements was to allow VXN to plan film shoots in advance.	<i>Id.</i> , Ex. 43, Mosny Dep., 57:22-25.
19	49	Another purpose of the Appearance Requirements was to ensure the safety of other actors.	<i>Id.</i> , Ex. 37; Ex. 43, Mosny Dep., 141:22- 146:24.
20	50	Plaintiff had complete discretion as to what days she worked for VXN.	<i>Id.</i> , Ex. 28, Thoma Dep., 153:23– 154:4.
21	22	23	24
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1	it specifically states that
2	“[Plaintiff] will provide
3	services on an as-needed
4	basis, including nights,
5	weekend, and holiday.”
6	Exhibit 66 is the
7	Performance Agreement
8	signed on July 13, 2021
9	that states a “[Plaintiff]
10	will provide services on
11	an as-needed basis,
12	including nights,
13	weekend, and holiday.”
14	Exhibit 66 further states
15	that if “[Plaintiff] is not
16	available on the date
17	proposed by
18	[Defendants] to film a
19	Scene, [Plaintiff] will
20	provide an alternative
21	date within two weeks of
22	[Defendants] originally
23	proposed dates.”
24	Exhibits 64 and 66 both
25	identify “unreasonable
26	unavailability” as causes
27	for termination. Exhibit
28	25

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28

1			specifically the August 2022 shoot.	
2				
3	52	If Plaintiff declined a work date, VZN could not force her to appear.	<i>Id.</i> , Ex. 29, Murphy Dep., at 96:4-7, 104:1-14.	Disputed. Plaintiff could be terminated if she did not appear for her shoots. Exhibit 64 and 66 are the two Performance Agreements that governed the relationship between Plaintiff and Defendants states that “unreasonable unavailability” is grounds for termination. Exhibit 27 is a termination letter sent to Plaintiff that cites Plaintiff’s unavailability as reasons for her termination.
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20	53	Plaintiff was free to decline a proposed work date at her absolute discretion.	<i>Id.</i> , Ex. 29, Murphy Dep., at 68:13-69:23.	Disputed. Plaintiff could be terminated if she did not appear for her shoots. Exhibit 64 and 66 are the two Performance Agreements that
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1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	

1			with. For example, Exhibit 52 is Plaintiff's Deposition. On Page 150 Plaintiff testifies that she maintained a "no-list" of performers she did not want to work with, but Defendants forced her to work with one of the performers that was on her "no'list."	
12	55	During the Contract Period, Plaintiff had the right to decline a scene if she did not want to work with any individual.	<i>Id.</i> , Ex. 29, Murphy Dep., 68:12- 69:13.	Disputed. Plaintiff was forced to work with talent she did not want to work with and no comporting with Defendants' subjective artistic vision and directions was grounds for termination. For example, Exhibit 52 is Plaintiff's Deposition. On Page 150 Plaintiff testifies that she maintained a "no-list" of performers she did not want to work with, but

1			Defendants forced her to work with one of the performers that was on her "no'list." Exhibits 64 and 66, which are the Performance Agreements, both contain provisions stating an inability to meet Defendants' subjective artistic expectations and failure to follow Defendants' directions are grounds for termination.
16	56	VXN provided Plaintiff with scripts to review prior to shoot dates.	<i>Id.</i> , Ex. 28, Thoma Dep., 95:20–96:2. Undisputed.
17	57	Plaintiff was free to suggest changes to the scripts.	<i>Id.</i> , Ex. 28, Thoma Dep., 96:3-19; Ex. 29, Murphy Dep. 69:15-20. Disputed. Plaintiff's recommended changes were ignored. Exhibit 52 96 :13-16 Plaintiff testifies that Defendants would typically never listen to her changes. Exhibit 12 contains Defendants' slack

1			messages discussing scripting and scene changes without the consultation of Plaintiff.
2			
3			
4			
5	58	Plaintiff worked with Chris Applebaum ("Applebaum") as a director prior to the Contract Period.	<i>Id.</i> , Ex. 28, Thoma Dep., 58:4–60:1.
6			Undisputed.
7			
8			
9	59	Plaintiff suggested Applebaum as director her first scene with VXN.	<i>Id.</i> , Ex. 28, Thoma Dep., 59:23–60:1.
10			Undisputed.
11			
12			
13	60	Applebaum directed Plaintiff's first scene with VXN.	<i>Id.</i>
14			Undisputed.
15			
16			
17	61	Plaintiff and Applebaum jointly proposed Plaintiff's co-stars for her first VXN scene.	<i>Id.</i> , Ex. 28, Thoma Dep., 93:9-23; Ex. 40.
18			Undisputed.
19			
20	62	VXN engaged Plaintiff's choice of co-star for her first VXN scene.	<i>Id.</i> , Ex. 28, Thoma Dep., 93:9-23.
21			Undisputed.
22			
23	63	Applebaum characterized Plaintiff's engagement with VXN as a	<i>Id.</i> , Ex. 40. Disputed. This is misleading. Mr. Applebaum states that he would like future
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1	collaboration.		collaboration between the groups, and was referring to his separate business', "Eats," relationship with Vixen. Exhibi 40.
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13	64	Applebaum collaborated with VXN to determine creative elements of Plaintiff's first scene with VXN.	<i>Id.</i> , Ex. 40.
14			Undisputed.
15			
16	65	VXN did not provide Plaintiff with any training.	<i>Id.</i> , Ex. 28, Thoma Dep., at 95:13-9.
17			Undisputed.
18			
19	66	VXN never requested Plaintiff to re-shoot a scene due to dissatisfaction with her performance.	<i>Id.</i> , Ex. 28, Thoma Dep., at 96:20– 97:15.
20			Undisputed.
21			
22	67	The Agreements allowed VXN to terminate only for-cause.	<i>Id.</i> , Ex. 23, at ¶13.2.
23			Disputed. This is misleading as "Cause" is specifically defined exclusively by Vixen and includes a wide array of reasons.
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1			define “Cause” as “Performer's (1) material, uncured breach of this Agreement; (2) inability to meet Producer's subjective artistic expectations; (3) failure to follow any framework; (4) violation of Producer's rules; (5) violation of any applicable laws, rules, or regulations; or (6) failure to follow Producer's directions; (7) unreasonable unavailability; (8) or as otherwise set forth throughout this Agreement.”	
19	68	The Agreements allowed Plaintiff an opportunity to cure a breach.	<i>Id.</i> , Ex. 23, at ¶13.2.	Disputed. The agreements never provide for a mechanism for curing any breach. They just states Plaintiff has a certain amount of time to cure and must

1	2	3	4	5	6	7	8	9	10	11	12	13	cure, otherwise Defendants can terminate and sue for damages. What constitutes a cure and how the parties agree on the definition of cure is never provided in either Agreement. This is evident from the Plain language of Exhibits 64 and 66.	
14	69	On September 28, 2022, VXN notified Plaintiff that it was terminating her contract for-cause ("Termination Notice").	15	16	17	18	<i>Id.</i> , Ex. 27.	19	20	21	22	23	24	Disputed. Once again, the term "for-cause" is vague and misleading. Plaintiff was terminated for not being able to attend two shoots scheduled by Defendants. Exhibit 27.
25	70	Plaintiff testified that prior to the Contract Period, Plaintiff earned roughly \$50,000 per month providing adult entertainment services.	26	27	28	<i>Id.</i> , Ex. 28, Thoma Dep., 19:11-17.	29	30	31	32	33	34	35	Disputed. Plaintiff testified she sometimes earned \$50,000 per month from camming, modeling, and hairdressing. Exhibit 52 is Plaintiff's deposition,

1			25 :15-21 and 26 :18-25 demonstrate this.
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4	71	Prior to the Contract Period, Plaintiff launched a website entitled “Kenzieland” where she sold access to self- produced adult films.	<i>Id.</i> , Ex. 28, Thoma Dep., 63:14-16, 68:4-13.
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10	72	Plaintiff ran Kenzieland as business prior to formally incorporating.	<i>Id.</i> , Ex. 28, Thoma Dep., 62:1-11, 151:23.
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17	73	Plaintiff formally incorporated Kenzieland LLC as a Wyoming limited liability company on April 30, 2021.	<i>Id.</i> , Ex. 33.
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20	74	Prior to the Contract Period, Plaintiff hired Applebaum in connection with Kenzieland films.	<i>Id.</i> , Ex. 28, Thoma Dep., at 62:21– 63:10.
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25	75	Plaintiff produced and performed in all	<i>Id.</i> , Ex. 28, Thoma Dep.,
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1	Kenzieland films.	at 65:2-25.	
2	76 Plaintiff cast well-known adult film actors to appear in Kenzieland films.	<i>Id.</i> , Ex. 28, Thoma Dep., at 72:14-18, 73:12-21, 74:9-11.	Disputed. Plaintiff states she never paid any of the adult performers in her Kenzieland productions. Furthermore, those individuals did not have any written agreements with Plaintiff. Exhibit 28; P. 72, 73, 74
12	77 Plaintiff did not enter written agreements with any Kenzieland actors.	<i>Id.</i> , Ex. 28, Thoma Dep., at 70:14-71:4.	Disputed. The individuals in Kenzieland are not actors. Plaintiff never categorized these individuals as actors and Defendants are simply making a legal conclusion. Exhibit 28; P. 72, 73, 74
20	78 Plaintiff did not pay any Kenzieland actors.	<i>Id.</i>	Disputed. The individuals in Kenzieland are not actors. Plaintiff never categorized these individuals as actors and

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			Defendants are simply making a legal conclusion. Exhibit 28; P. 72, 73, 74
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79	Plaintiff did not engage any Kenzieland actors as employees.	*Id.*	Disputed. The individuals in Kenzieland are not actors. Plaintiff never categorized these individuals as actors and Defendants are simply making a legal conclusion. Exhibit 28; P. 72, 73, 74
80	Revenue generated by Kenzieland films was used to pay for production crew hired by Plaintiff.	*Id.*, Ex. 28, Thoma Dep., at 68:14-69:3.	Disputed. Plaintiff never stated she used the money to pay for a production crew, but rather to pay for production. Ex. 28 68:14-69:3.
81	During the Contract Period, Plaintiff released at least 23 films on Kenzieland.com.	*Id.*, Ex. 28, Thoma Dep., at 69:4-14, 70:7-8, Ex. 1.	Disputed. Not all of the products were released during the contract period. Defendants have not produced any

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1			evidence to indicate these adult works were released during the contract period.
2	82	Plaintiff marketed Kenzieland to the public.	<i>Id.</i> , Ex. 28, Thoma Dep., at 62:15, 86:1-25.
3	83	During the Contract Period, Plaintiff provided acting services to other adult film studios.	<i>Id.</i> , Ex. 28, Thoma Dep., at 79:8-80:9; Ex. 29, Murphy Dep., at 44:18-48:6, 57:1-7, 109:22- 110:5, 175:18-23; Ex. 42.
4	84	Plaintiff formed Lola March LLC in January	<i>Id.</i> , Ex. 35.
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1	2	2022 as a California limited liability company.	3
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1	89	Plaintiff did not declare any W-2 income for services to adult film studios from 2020 to 2022.	<i>Id.</i>	Undisputed.
6	90	Plaintiff's 2020 Schedule C identified \$149,867 in gross income against \$124,000 in business deductions.	Lerner Decl., Ex. 46.	Undisputed.
12	91	Plaintiff's 2021 Schedule C identified \$317,665 in gross income against \$250,055 in business deductions.	Lerner Decl., Ex. 47.	Undisputed
17	92	Plaintiff's 2022 Schedule C identified \$318,689 in gross income against \$228,428 in business deductions.	Lerner Decl., Ex. 48.	Undisputed
20	93	All payments received by Plaintiff, regardless of the payee, were treated the same for tax purposes.	Brown Decl., Ex. 36, Lerner Dep., at 25:3-15.	Disputed. This misstates Mr. Lerner's testimony. Mr. Lerner's testimony only discussed payments made to Lola March, LLC, which by

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	photographs for commercial sale.		
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98	The Performance Agreement dated July 13, 2021 states that Producer (Defendants) are creators of adult motion pictures and photographs for commercial sale.	Exhibit 66	Undisputed.
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99	The Performance Agreement dated November 11, 2020 states that Defendants intend to contract with Plaintiff as an “actor and model” in connection with adult motion pictures and photographs.	Exhibit 64	Undisputed.
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100	The Performance Agreement dated July 13, 2021 states that Defendants intend to contract with Plaintiff as an “actor and model” in connection with adult motion pictures and photographs.	Exhibit 66	Undisputed.
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101	Defendants scheduled Plaintiff to begin her workday at 7:00am	Exhibit 49, Lew Deposition 60:21-25 and 61:1-5	Disputed.  <i>Evidence does not support statement.</i> Exhibit 49 does not include page 60 of the transcript. This missing page makes clear that Witness is engaging with counsel’s hypothetical, who sets the “time” for the discussion. See Tr. 60:24–25 (“[I]s it fair to start with 7:00 a.m.?”). At Tr. 61:1–5, the Witness “estimate[s]” that
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			photography commenced around “9:00 a.m.”
102	The Performance Agreement dated November 11, 2020 has an exclusivity clause that prevents Plaintiff from filming with any third party producer or production company that competes directly with [Defendants]” and forbids Plaintiff from “camming” with a company called CamSoda.	Exhibit 64, Section 7.1	Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Statement is misleading.</i> It omits qualifying language from the term. The language of the Agreements speak for themselves.
103	The Performance Agreement dated November 11, 2020 has an provision that acknowledges that breaching the terms set out in section 7.1 are grounds for termination.	Exhibit 64, Section 7.1	Disputed in part.  <i>Pincite is incorrect.</i> See L.R. 56-2. Termination is covered at Section 13.
104	The Performance Agreement dated November 11, 2020 states that if Plaintiff is to change her physical appearance, including the measurements of her body, level of physical fitness, hairstyle, overall appearance, obtaining tattoos or obtaining piercings, without written permission from Defendants, then she is subject to termination.	Exhibit 64, Section 7.2	Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Misstates evidence.</i> Term states Performer “may” be subject to termination if a breach of the contract cannot be cured or resolved within “48 hours of the breach.” Ex. 43, Mosny Dep., 141:22-146:24
105	The Performance Agreement dated July 13, 2021 states that if Plaintiff is to change	Exhibit 66, Section 7.2	Disputed in part.  <i>Statement is</i>

	her physical appearance, including the measurements of her body, level of physical fitness, hairstyle, overall appearance, obtaining tattoos or obtaining piercings, without written permission from Defendants, then she is subject to termination.		<i>compound. Or. MSJ § C(1)(b), § C(4)(b). Misstates evidence.</i> Term states Performer “may” be subject to termination if a breach of the contract cannot be cured or resolved within “48 hours of the breach.” Ex. 43, Mosny Dep., 141:22-146:24
11 12 13 14 15 16 17	106  The Performance Agreement dated November 11, 2020 states that the employment relationship between Plaintiff and Defendants may continue after the expiration of the agreement per Defendants’ reasonable request if Defendants require additional services with retakes, added scenes, trailers, or changes to content.	Exhibit 64, Section 8	Disputed in part.  <i>Improper legal conclusion. Or. MSJ § C(1)(b). To the extent “employment relationship” implies Plaintiff was an employee (and not an independent contractor) under the Agreement, that is not a fact.</i>
19 20 21 22 23 24 25 26	107  The Performance Agreement dated July 13, 2021 states that if Plaintiff is to change her physical appearance, including the measurements of her body, level of physical fitness, hairstyle, overall appearance, obtaining tattoos or obtaining piercings, without written permission from Defendants, then she is subject to termination.	Exhibit 66, Section 8	Disputed in part.  Duplicative of No. 105. <i>See Or. MSJ § C(1)(b).</i> Statement is compound. <i>Id.</i> ; § C(4)(b). Pincite is incorrect. <i>See L.R. 56-2.</i> Appearance is covered by Section 7.2. <i>Misstates evidence.</i> Term states

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1	social media accounts.		
2	112 Plaintiff was not a part of any union during her time working with Defendants.	Exhibit 66, Section 11; Exhibit 64, Section 11	Disputed in part.  <i>Evidence does not support statement.</i> While the Agreements contain a term concerning Plaintiff's "Non- Union Affiliation," that term is not evidence of the truth of the matter asserted.
10	113 The Performance Agreement dated November 11, 2020 only gives Defendants the ability to terminate the Performance Agreement.	Exhibit 64, Sections 13.2 and 13.3	Disputed in part.  <i>Improper legal conclusion. Or. MSJ § C(1)(b).</i> Termination of a contract is by operation of law. <i>Evidence does not support statement.</i> Section 13.2 lists grounds for termination "for Cause," and Section 13.3 explains force majeure events, but neither term states that Plaintiff cannot terminate the Agreement. Finally, Moz testified that Plaintiff was not obligated to accept any proposed dates. Ex. 43, Mosny Dep., 141:22-146:24. Id., Ex. 28, Thoma Dep., 153:23-154:4.

1			Thus, Plaintiff could effectively terminate by refusing all future dates without consequence.	
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5	114	The Performance Agreement dated July 13, 2021 only gives Defendants the ability to terminate the Performance Agreement.	Exhibit 66, Sections 13.2 and 13.3	Disputed in part.  <i>Improper legal conclusion. Or. MSJ § C(1)(b).</i> Termination of a contract is by operation of law. <i>Evidence does not support statement.</i> Section 13.2 lists grounds for termination “for Cause,” and Section 13.3 explains force majeure events, but neither term states that Plaintiff cannot terminate the Agreement.
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18	115	The Performance Agreement dated November 11, 2020 requires Plaintiff to abide by certain ethical policies and practices at all times during the terms of the Performance Agreement otherwise she would be terminated.	Exhibit 64, Section 14	Disputed in part.  <i>Vague</i> as to “abide by certain ethical policies and practices.” The language of the Agreement speaks for itself.
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22	116	The Performance Agreement dated July 13, 2021 only gives Defendants the ability to terminate the Performance Agreement.	Exhibit 66, Section 14.	Disputed.  Duplicative of No. 114. <i>See Or. MSJ § C(1)(b).</i> Pincite is incorrect. <i>See L.R. 56-2. Improper legal</i>
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			<i>conclusion. Or. MSJ § C(1)(b).</i> Termination of a contract is an operation of law. <i>Evidence does not support statement.</i> Section 13.2 lists grounds for termination “for Cause,” and Section 13.3 explains force majeure events, but neither term states that Plaintiff cannot terminate the Agreement.
117	The Performance Agreement dated November 11, 2020 grants Defendants the “worldwide, irrevocable, perpetual right to photograph and re-photograph” Plaintiff in relation to the content created under the Performance Agreement.	Exhibit 64, Section 5	Undisputed.
118	The Performance Agreement dated November 11, 2020 grants Defendants the right to retain Plaintiff’s voice and performance by any present or future methods or means.	Exhibit 64, Section 5	Disputed in part.  <i>Vague</i> as to “retain.” Leaves out qualifying language about what Defendants may use Plaintiff’s voice for. The language of the Agreement speaks for itself.
119	The Performance Agreement dated November 11, 2020 grants Defendants the right to retain license any and all of Plaintiff’s approved	Exhibit 64, Section 5	Disputed in part.  <i>Vague</i> as to “retain.” Leaves out qualifying language about how

1	names, including all stage names and aliases, approved biography, resume, caricature, voice and likeness.		Defendants may use Plaintiff's persona. Section 5 expressly states that "Performer will retain all rights in the stage name 'Kenzie Anne,' however during the term of this Agreement, Producer and Producer's assigns and licensees may use Performer's name and likeness."
10	120 The Performance Agreement dated November 11, 2020 grants Defendants the ownership of all products created by Plaintiff in relation to the Performance Agreement	Exhibit 64, Section 5	Disputed in part. <i>Vague</i> as to "all products." The language of the Agreement speaks for itself. VZN Copyrights the Motion Pictures, not the still photographs. Emilie Kennedy Decl. para. 4
19	121 The Performance Agreement dated July 13, 2021 grants Defendants the "worldwide, irrevocable, perpetual right to photograph and re- photograph" Plaintiff in relation to the content created under the Performance Agreement.	Exhibit 66, Section 5	Undisputed.
22	122 The Performance Agreement dated July 13, 2021 grants Defendants the right to retain Plaintiff's voice and performance by any present or future methods or means.	Exhibit 66, Section 5	Disputed in part. <i>Vague</i> as to "retain." Leaves out qualifying language about what Defendants may use Plaintiff's voice for.

			The language of the Agreement speaks for itself.
123	The Performance Agreement dated July 13, 2021 grants Defendants the right to retain license any and all of Plaintiff's approved names, including all stage names and aliases, approved biography, resume, caricature, voice and likeness.	Exhibit 66, Section 5	Disputed in part.  <i>Vague</i> as to "retain." Leaves out qualifying language about how Defendants may use Plaintiff's persona. Indeed, Section 5 expressly states that "Performer will retain all rights in the stage name 'Kenzie Anne,' however during the term of this Agreement, Producer and Producer's assigns and licensees may use Performer's name and likeness."
124	The Performance Agreement dated November 11, 2020 states that even if the results and proceeds of Plaintiff's services under the Performance Agreement are determined not to be a work made for hire, then Plaintiff relinquishes all of those rights, titles, and interest in those work to Defendants.	Exhibit 64, Section 5	Disputed in part.  <i>Misstates the evidence.</i> Section 5 states, in relevant part that Plaintiff " <i>transfers and assigns to Producer</i> all right, title, and interest in the work . . ." (emphasis added). The language of the Agreement speaks for itself.
125	The Performance Agreement dated November 11, 2020 states that Plaintiff shall provide services on an "as-needed basis" including	Exhibit 64, Section 5	Disputed in part.  <i>Pincite is incorrect.</i> See L.R. 56-2. "Hours and

1	nights, weekends, and holidays.		Obligations for Service” is discussed in Section 4.
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3	126 The Performance Agreement 4 dated November 11, 2020 5 states that sessions may take 6 up to ten hours.	Exhibit 64, 7 Section 5	Disputed in part.  <i>Pincite is incorrect.</i> See L.R. 56-2. “Hours and Obligations for Service” is discussed in Section 4.
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9	127 The Performance Agreement 10 dated July 13, 2021 states 11 that Plaintiff shall provide 12 services on an “as-needed 13 basis” including nights, 14 weekends, and holidays.	Exhibit 66, 15 Section 5	Disputed in part.  <i>Pincite is incorrect.</i> See L.R. 56-2. “Hours and Obligations for Service” is discussed in Section 4.
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17	128 The Performance Agreement 18 dated July 13, 2021 states 19 that sessions may take up to 20 ten hours.	Exhibit 66, 21 Section 5	Disputed in part.  <i>Pincite is incorrect.</i> See L.R. 56-2. “Hours and Obligations for Service” is discussed in Section 4.
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23	129 SAG-AFTRA allows models 24 to be a part of their union.	Exhibit 50; 25 Exhibit 51; Declaration of Rafael Yedoyan (“Yedoyan Decl.”) ¶ 2	Disputed.  Lacks foundation. F.R.Es. 901; 902. To the extent statement seeks to “prove the truth of the matter asserted in the statement,” it is <i>hearsay</i> . See F.R.E. 802. Vague as to “allows,” “models” and “part of.”
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1			Plaintiff failed to produce Exhibit 50 and 51 in response to Defendants' written discovery, so it should be excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).
8	130	Plaintiff spent around six hours per day when she was on set being photographed without any relation to scenes being filmed.	Exhibit 52; Thoma Deposition, 145:21-25 and 146:1-5;
26	131	Plaintiff was photographed	Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Evidence does not support statement. Witness did not testify that she spent six hours in a photoshoot, but rather that “six, seven hours down the line [after makeup] is when we would start filming . . .” Tr. 146:4–5. Misstates testimony.</i> Plaintiff did not testify that the photos were “without any relation to scenes being filmed” but rather that they “didn’t typically involve the scene” and that “[s]ometimes it was split . . .” Tr. 145:23–24 (emphasis added).

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																		during every single shoot she performed.																									
																		Thoma Deposition, 145:21-25 and 146:1-5; Exhibit 49; Lew Deposition 57-59, 65-66, 70, 71, 89-90																									
																		<i>Vague</i> as to “every” and “shoot.” (Ex. 52) <i>Evidence does not support statement.</i> Plaintiff testified about estimated hours spent before filing, not about whether she was photographed in “every” shoot.																									
																		(Ex. 49) <i>Lacks pincites. See L.R. 56-2. Misstates testimony.</i> Witness only discusses two Vixen shoots, Tr. 58:24–59:2, that photography took place on the same day as filming, Tr. 64:5–9, confirmed that Plaintiff took photos for various websites, Tr. 70:12–71:13, and confirmed specific photos were shot for Vixen. Tr. 89:25–90:18.																									
																		132 Plaintiff spent at least two hours every single shoot in hair and makeup.						Exhibit 49; Lew Deposition, 61:5-7		Disputed.																	
																		<i>Lacks foundation.</i> F.R.E. 901. <i>Hearsay.</i> F.R.E. 802. <i>Misstates testimony.</i> Witness merely provided an “estimate” of performer’s general schedules, <i>see</i> Tr. 61:4–7, not specifics																									

1			about Plaintiff's activities. Witness did not testify about "every single shoot."
2	133	Plaintiff had several dozen still photoshoots, both while filming and not filming, while she worked with Defendants.	Exhibits 14, 15, 16, 51, Exhibit 66
3			Disputed in part. <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Vague as to "several dozen."</i>
4			(Ex. 51) <i>Lacks pincite. See L.R. 56-</i> Plaintiff failed to produce Exhibit 51 in response to Defendants' written discovery, so it should be excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc., 993 F.3d 773, 740 (9<sup>th</sup> Cir. 2021). Lacks foundation. F.R.E. 901. Evidence does not support statement.</i> Even if admissible, none of the materials discussed in the declaration involve Plaintiff.
5			<i>Even if admissible, none of the materials discussed in the declaration involve Plaintiff.</i>
6			(Ex. 66) <i>Lacks pincite. See L.R. 56-</i> 2. <i>Evidence does not support statement.</i> This Exhibit just contains the parties'
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			Agreement.
134	VXN's production team decides the and date of the shoots.	Exhibit 49 Lew Deposition 69:13-25.; Exhibit 76; Mosny Deposition; 18:21-19:11	Disputed.  The statement is incomplete. <i>Vague</i> as to "decides."  <i>(Ex. 49) Evidence does not support statement.</i> Witness merely testifies that production team prepares the "call sheet." (Ex. 76) <i>Evidence does not support statement.</i> Witness merely testifies that production team sets the "call time."  The date of any given shoot is a collaboration between Plaintiff and the production team. Ex. 43, Mosny Dep., 141:22-146:24.
135	Plaintiff is expected to be available at the location and time VXN's production department sets.	Exhibit 49 Lew Deposition 70:4-7.	Disputed in part.  <i>Vague</i> as to "expected to be available."
136	Only paying subscribers could legally view the promotional materials on Defendants' website for the scenes filmed by Defendants	Exhibit 49 Lew Deposition 82:4-13	Disputed.  <i>Evidence does not support statement.</i> Witness expressly

1			stated that promotional materials may also appear on “a DVD cover.” Tr. 82:4–13.	
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5	137	The Performance Agreement dated November 11, 2020 states that “Performer’s (1) material, uncured breach of this Agreement; (2) inability to meet Producer’s subjective artistic expectations; (3) failure to follow any framework; (4) violation of Producer’s rules; (5) violation of any applicable laws, rules, or regulations; or (6) failure to follow Producer’s directions; (7) unreasonable unavailability; (8) or as otherwise set forth throughout this Agreement” are grounds for termination.	Exhibit 64	Disputed in part.  <i>Lacks pincite. See L.R. 56-2.</i> Discussion in Section 13.2.
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17	138	The Performance Agreement dated November 11, 2020 states that Plaintiff may be required to use sexual aids for certain scenes with Defendants.	Exhibit 64	Disputed in part.  <i>Lacks pincite. See L.R. 56-2. Discussed in Section 3.</i>
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19	139	Defendants reimbursed Plaintiff for medical examination related to her work with Defendants.	Exhibit 53	Undisputed.
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22	140	Defendants’ production department and management would decide if sexual aids would be needed.	Exhibit 49 Lew Deposition 88:20-25	Disputed in part.  <i>Vague as to “sexual aids” and “would be needed.”</i>
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25	141	Plaintiff decided to enter the adult entertainment industry	Exhibit 52 Thoma	Disputed in part.
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1	as a form of sexual liberation.	Deposition 39:7-10	Vague as to “sexual liberation.”
2			<i>Incomplete.</i> Plaintiff testified immediately before that “the goals are vague because they come and go with who you’re around.” <i>See Tr.</i> 39:1–6.
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19	142 Defendants would never listen to Plaintiff’s recommended changes to their script as they would be “set in how they wanted things done.”	Exhibit 52; Thoma Deposition 96:13-16	Disputed.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Misstates testimony.</i> Plaintiff stated that “directors”—not Defendants—were “[t]ypically” not receptive. <i>Tr.</i> 96:13–16. She later answered “yes” that the directors “listen[ed]” to her complaints. <i>See Tr.</i> 96:17–19.
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			while providing services to VXN. Tr. 35:7–8.
144	Plaintiff was instructed by Defendants not to film any sexual content longer than five minutes and was not allowed to film sexual content with another individual while working with Defendants.	Exhibit 52; Thoma Deposition : 22 :11-15; Thoma Deposition 35 :11-15	Disputed.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Vague as to “film sexual content with another individual.” Lacks foundation. F.R.E. 901. Hearsay. F.R.E. 802. Plaintiff expressly testified that she was “not sure who at Vixen had instructed me” of the alleged terms. Tr. 22:11; see also Tr. 35:17 (responding “I can’t remember” when asked about alleged restrictions). Evidence does not support statement. Plaintiff expressly testified that she was “allowed to used” “some aspects” of camming platform. Tr. 35:7–8.</i>
145	The Performance Agreement dated July 13, 2021 states that if Plaintiff is not available during the a proposed date for a shoot, then she must provide an alternate date within two weeks of the proposed date.	Exhibit 66	Disputed in part.  <i>Lacks pincite. See L.R. 56-2. Discussed at Section 1. [See 113]</i>
146	Plaintiff could not offer	Exhibit 49;	Disputed.

1	alterative dates to arrive for a shoot if she was unavailable for the date originally proposed by Defendants at her own discretion.	Lew Deposition, Page 149; 22-25	<i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Vague as to “offer,” “alternative dates,” and “at her own discretion.” Evidence does not support statement. Witness testified that Plaintiff could offer “alternative dates.” See also (Ex. 66, at §1) (allowing Plaintiff to offer alternative dates). [See 113]</i>
13	147 Plaintiff was not free to decline work dates for shoots that she was not available for without consequence.	Exhibit 64, Exhibit 25, Exhibit 49; Lew Deposition, Page 149; 22-25, Exhibit 27	Disputed.  <i>Vague as to “not free,” “decline,” “not available,” and “without consequence.” (Ex. 64) Lacks pincite. See L.R. 56-2. Unintelligible. The statement is unclear. [See 113]</i>
19	148 Plaintiff was terminated because she was unable to make the shoots that Defendants had schedule[d] for her.	Exhibit 66	Disputed.  <i>Lacks pincite. See L.R. 56-2. Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Vague as to what is meant by Plaintiff was “unable to make the shoots . . . ”</i>

			<i>Misstates evidence.</i> The Agreement does not evidence Plaintiff's termination. Plaintiff's dismissal is outlined in Defendants' termination letter. Exhibit 27. <i>Misleading - Plaintiff had the ability to decline any date. [See 113]</i>
10	149	Plaintiff was terminated because she made body modifications without the written consent of Defendants.	Exhibit 66  <i>Lacks pincite. See L.R. 56-2. Statement is compound. Or. MSJ § C(1)(b), § C(4)(b).</i> <i>Vague as to "made body modifications . . ."</i> <i>Misstates evidence.</i> The Agreement does not evidence Plaintiff's termination. Plaintiff's dismissal is outlined in Defendants' termination letter. Exhibit 28.
21	150	Defendants unilaterally set and scheduled shoots for Plaintiff.	Exhibit 66  <i>Lacks pincite. See L.R. 56-2.</i> <i>Vague as to "unilaterally set and scheduled . . ."</i>

			<i>Misstates evidence.</i> The Agreement does not evidence Plaintiff's termination. Plaintiff's dismissal is outlined in Defendants' termination letter. Exhibit 28.
151	Plaintiff has received no formal acting training.	Exhibit 74; Thoma Decl." ¶ 2	Disputed in part.  <i>Vague</i> as to "formal acting training." Plaintiff failed to produce evidence in response to Defendants' written discovery, so it should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).
152	Plaintiff had not performed any acting in a professional setting during or prior to her work with Defendants.	Exhibit 74; Thoma Decl. ¶ 3	Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b).</i> <i>Vague</i> as to "acting in a professional setting . . ." <i>Unintelligible.</i> To the extent Plaintiff denies acting "during . . . her work with Defendants," in which she was engaged as a professional actor,

1	2	3	4	5	6	7	8	9	this is a contradiction and thus, false. Plaintiff failed to produce the evidence in response to Defendants' written discovery, so it should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9th Cir. 2021).
10	11	12	13	14	15	16	17	18	153 Plaintiff received no formal acting training by Defendants.  Exhibit 74; Thoma Decl. ¶4  Disputed in part.  <i>Vague</i> as to “no formal acting training.” Plaintiff failed to produce evidence in response to Defendants’ written discovery, so it should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).
19	20	21	22	23	24	25	26	27	154 There was always a director on set that would instruct Plaintiff on how to perform scenes while filming.  Exhibit 74; Thoma Decl. ¶5; Exhibit 64; Exhibit 66  Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b).</i> <i>Vague</i> as to “instruct . . . on how to perform.” (Exs. 64 and 66) <i>Lacks pincite. See L.R. 56-2. Evidence does not support statement.</i> The Agreements

			cannot evidence who was on set with Plaintiff or what they did.  Plaintiff failed to produce evidence in Exhibit 74 in response to Defendants' written discovery, so it should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).	
12	155	Plaintiff earned no more than \$50,000 a month prior to her time working with Defendants as a hairdresser, model, and camming.	Exhibit 52; Thoma Deposition 25:15-21 26: 18-25	Disputed in part.  <i>Misstates evidence.</i> Plaintiff did not testify that she made “no more than \$50,000 a month” and did not testify that her only sources of income came from being a hairdresser, model, or camming.
19	155	The Performance Agreement dated July 13, 2021 states that “Performer’s (1) material, uncured breach of this Agreement; (2) inability to meet Producer’s subjective artistic expectations; (3) failure to follow any framework; (4) violation of Producer’s rules; (5) violation of any applicable laws, rules, or regulations; or (6) failure to follow	Exhibit 66	Objection in part.  <i>Lacks pincite. See L.R. 56-2. Discussed in section 13.2</i>

1	Producer's directions; (7) unreasonable unavailability; (8) or as otherwise set forth throughout this Agreement" are grounds for termination.		
2	156 The "Vixen Angel" award was granted to extremely talented artists in the adult entertainment industry that would "break down walls and defy stereotypes" by Defendants.	Exhibit 54; Exhibit 51; Yedoyan Decl. ¶ 4	Objection in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b).</i> Plaintiff failed to produce Exhibits 54 and 51 in response to Defendants' written discovery, so it should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021). Advertisements are not testimony. Cf. F.R.C.P. 30(b)(6).
3	157 Plaintiff was unable to attend the June 2022 showcase shoot because she contracted Monkeypox.	Exhibit 74; Thoma Decl. ¶ 6;	Disputed  Plaintiff failed to produce the evidence in response to Defendants' written discovery, so it should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).
4	158 Vixen brands itself as a "Global Entertainment & Lifestyle Brand"	Exhibit 55 and Exhibit 56; Exhibit 51 Yedoyan Decl. ¶ 4 and	Disputed in part.  <i>Vague</i> as to "brands itself." Plaintiff failed to produce Exhibits

1	2	3	4	5.	55, 56, and 51 in response to Defendants' written discovery, so it should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021). Advertisements are not testimony. Cf. F.R.C.P. 30(b)(6).
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159	Defendants have multiple websites in which they sell merchandise to clients	Exhibit 57; and Exhibit 51 Yedoyan Decl. ¶ 6	Disputed in part.  Plaintiff failed to produce Exhibits 57 and 51 in response to Defendants' written discovery, so it should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).		
160	Defendants' performers model the merchandise they sell.	Exhibit 58; Exhibit 51 Yedoyan Decl. ¶ 7	Disputed in part.  <i>Vague</i> as to "model." Plaintiff failed to produce Exhibits 58 and 51 in response to Defendants' written discovery, so it should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).		
161	Vixen Angels model the merchandise with	Exhibit 58; Exhibit 51	Disputed in part.		

1	Defendants' and their affiliated brands' branding.	Yedoyan Decl. ¶7	Vague as to "model." Lacks foundation. F.R.E. 901. Plaintiff has not shown that the images were published at or around the time of the dispute. Plaintiff failed to Exhibits 58 and 51 in response to Defendants' written discovery, so it should be excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021)..
13	162	Defendants sell bras, lingerie, t-shirts, swimwear, and sweatpants with their brand name or the brand name of their affiliate brands on their website.	Exhibit 59; Exhibit 51 Yedoyan Decl. ¶8 Disputed in part. Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Lacks foundation. F.R.E. 901. Plaintiff has not shown that the images were published at or around the time of the dispute. Plaintiff failed to Exhibit 59 and 51 in response to Defendants' written discovery, so it should be excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).
26	163	Plaintiff, like other models	Exhibit 59; Disputed in part.

	working for Plaintiff, modeled merchandise with the name of Defendants' brand that Defendants sold online as a part of their lifestyle brand.	[His declaration is Ex. 51] Yedoyan Decl. ¶8; Exhibit 74 Thoma Decl. ¶8	<i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Lacks foundation. F.R.E. 901. Plaintiff has not shown that the images were published at or around the time of the dispute. Plaintiff failed to produce Exhibits 59, 51, 74 in response to Defendants' written discovery, so it should excluded under FRCP 37(c)(1). Merchant v. Corizon Health, Inc., 993 F.3d 773, 740 (9<sup>th</sup> Cir. 2021).</i> <i>Evidence does not support statement. Exhibit 59 only shows articles of clothing. It does not show anyone—let alone Plaintiff—wearing them.</i>
164	Defendants advertise their clothing brand on their X-Account	Exhibit ?? Exhibit 60; Exhibit 52 Yedoyan Decl. ¶9	Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Lacks foundation. F.R.E. 901. Plaintiff has not shown that the images were published at or around the time of the</i>

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1 documents, and of course  
2 coordinate the travel.”  
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*support statement.*  
Neither Defendants  
nor one of its  
corporate  
representatives made  
the statement. The  
email says nothing  
about Plaintiff being  
required to attend.

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167 Plaintiff modeled numerous  
times for Defendants to  
promote Defendants’ brand  
and in ways completely  
unrelated to filming.

Exhibit 62;  
Exhibit 52;  
Thoma  
Deposition  
145: 21-25  
and 146: 1-9;  
Exhibit 70.

Disputed in part.  
  
*Vague as to*  
“modeled,”  
“numerous times,”  
and “ways  
completely unrelated  
to filming” (Ex. 62)  
*Lacks pincite. See*  
L.R. 56-2. *Evidence*  
*does not support*  
*statement.* Some of  
the images show  
Plaintiff promoting  
her scenes while  
other involve “mood  
boards” that were not  
used in an internal–  
not promotional–  
capacity. (Ex. 52)  
Duplicate of No.  
103. *See Or. MSJ §*  
C(1)(b). *Misstates*  
*testimony.*  
Plaintiff did not  
testify that the photos  
were “completely  
unrelated to filming”  
but rather that they  
“didn’t typically  
involve the scene”  
and that “[s]ometimes

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1			shoot, and states that she was gave input on the location prior to the shoot. <i>See Tr.</i> 100:3–6. [See 113]	
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5	172	Defendants would handle Plaintiff's hair and makeup prior to her shoots.	Exhibit 49; Lew Deposition 61:7-9	Disputed in part.  <i>Vague</i> as to "handle." <i>Misstates testimony.</i> Witness testified about general procedures, in cited to testimony. Witness noted that Plaintiff "requested a specific Vixen hair and makeup artist that we work with." <i>Tr.</i> 100:13–14.
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14	173	Plaintiff maintained a "no-list" throughout her career, which is a list of performers she would not want to work with.	Exhibit 52; Thoma Deposition 150: 18-22	Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b).</i> <i>Misstates testimony.</i> Plaintiff testified that her agency maintained a "no list." Her testimony says nothing about when or how long she maintained such a list.
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21	174	On one occasion, Plaintiff arrived on set to see a performer on her "no-list" present on set.	Exhibit 52; Thoma Deposition 150: 18-22	Disputed in part.  <i>Evidence does not support statement.</i> Plaintiff noted that there was a disagreement as to whether the
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			individual in question was the same as the person on her “no list.” <i>See</i> Tr. 151:4–11.
1 2 3 4 5 6 7 8 9 10 11 12 13	175  Plaintiff was required to work with the performer on her “no-list”, despite her objections.	Exhibit 52; Thoma Deposition 150-152	Disputed.  <i>Vague</i> as to “required” and “work with.” <i>Lacks pincite. See L.R. 56-2. Misstates testimony.</i> While Plaintiff performed with the individual, <i>see</i> Tr.151:11, she does not testify that Plaintiff “required” her to do so.
14 15 16 17	176  Defendants would determine the time shoots would take place.	Exhibit 49; Lew Deposition 61:1-25; 69-70	Disputed in part.  <i>Vague</i> as to “determine.” But the production team would prepare and send the call sheets, Tr. 69:13–15, which had the information about the shoots.
19 20 21 22 23 24 25 26 27 28	177  Defendants always unilaterally set the location of where shoots would take place.	Exhibit 49; Lew Deposition 61:1-25; 69-70	Disputed.  <i>Vague</i> as to “unilaterally set” and “take place.” <i>Evidence does not support statement.</i> Witness merely testified about general procedures for preparing and sending call sheets.

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			Plaintiff testified to the contrary, nothing that she had prior input to the Joshua Tree shoot. <i>See</i> (Ex. 52) Tr. 100:3–6.
5	178	Defendants provided all required clothing, makeup, props, intimacy aids, set-dressing and other involved instrumentalities used in scenes by Plaintiff.	Exhibit 49; Lew Deposition 61:7-9 88:11-13; 89:14-16; Lew Deposition 91:13-93:5
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	179	Defendants provided props, cameras, and cleaning supplies for Plaintiff's Vixen Angel Photoshoot at Joshua Tree	Exhibit 62
	180	The Agreements signed by Plaintiff were pre-drafted forms that Plaintiff was not allowed to negotiate.	Exhibit 49; Lew Deposition 83:4-25

			Vague as to “The Agreements,” “pre-drafted forms.” Evidence does not support statement. The Witness did not testify that Plaintiff was “not allowed to negotiate.” In fact, Plaintiff testified that she did negotiate terms. (Thoma Depo.) Tr. 88:6–90:20 (discussing agent’s negotiations); <i>see also</i> (Ex. 74) (“I was not able to negotiate the terms of the Performance Agreements aside from the amount that I would get paid.”).
16 17	181	Plaintiff was required to begin a “loan-out” company in order for Defendants to pay her.	Exhibit 74; Thoma Decl. ¶ 10.; Exhibit 52, Thoma Deposition 152:10-12  Disputed.  <i>Lacks foundation.</i> F.R.E. 901. Hearsay. F.R.E. 802. Vague as to “required” and “in order to pay.”  <i>Misstates testimony.</i> Plaintiff states that “Defendants initially paid me directly . . .” (Ex. 74), at ¶10; see also Tr. 152:10–12 (“Vixen had told Dave Rock and Ryan Kona to advise me to get an LLC for payment or I couldn’t work.”)

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17	182	Defendants required Plaintiff to sign a W9	Exhibit 74; Thoma Decl. ¶ 11.
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27	183	The Performance Agreements Plaintiff entered into are VXN's own standard form contracts	Exhibit 49; Lew Deposition 83:4-25
28	184	Plaintiff did not present Defendants with her own contract	Exhibit 74; Thoma Decl. ¶ 9.

1			not state that she never received the Agreements. Plaintiff's signature appears on all relevant Agreements. <i>See</i> (Exs. 64 and 66). Plaintiff failed to produce the evidence in response to Defendants' written discovery, so it should be excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).
13	185	Plaintiff did not draft any of the terms of the Performance Agreements or Addendums	Exhibit 74; Thoma Decl. ¶ 9.  <i>Vague</i> as to "draft." <i>Evidence does not support statement.</i> While Plaintiff may not have literally written down the term, she was able to draft the terms through negotiation. Ex. 74, at ¶ 9 (admitting negotiations); <i>see</i> (Thoma Depo.) Tr. 88:6–90:20 (discussing agent's negotiations). Plaintiff failed to produce the evidence in response to Defendants' written discovery, so it

1	2	3	4	5	should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).		
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186	Plaintiff was not included in any of the #kenzieeats Slack messages produced by Defendants where script and film details were being discussed	Exhibit 12	Undisputed.	187	Plaintiff entered into numerous “Model Release and Grant of Rights” agreements while working for Defendants.	Exhibit 73	Undisputed.
188	The Model Release Agreements state that Plaintiff is being hired for the “purposes of creating...photographs...”	Exhibit 73	Disputed in part.  <i>Lacks pincite. See</i> L.R. 56-2. Evidence is incomplete. Section 2, which covers services, states: “Model will render services as an actor/performer for one or more films or performances at the direction of and for Produce . . . .” The language truncated by Plaintiff comes from Section 3, regarding the parties’ “Grants of Rights.”	189	The Model Release Agreements state that Plaintiff shall “comply to the	Exhibit 73	Disputed in part.  <i>Lacks pincite. See</i>

1	best of Model's ability with Producer's reasonable directions, rules, instructions and regulations"		L.R. 56-2. This is from Section 3, "Grants and Rights."
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4	190 The Model Release Agreements state that "Model's Performance is for adult oriented entertaining and will be used to create and market adult oriented content and products"	Exhibit 73	Disputed in part.  <i>Lacks pincite. See L.R. 56-2. This is from Section 11, "Miscellaneous."</i>
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10	191 The Department of Industrial Relations ("DIR") states that certain Wage Orders, such as 7 and 12, are industry orders, while other Wage Orders, like 4, are occupational orders.	Exhibit 68, P. 4	Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Improper legal conclusion. Or. MSJ § C(1)(b).</i> Plaintiff failed to produce the document or evidence in response to Defendants' written discovery, so it should excluded under FRCP 37(c)(1). <i>Merchant v. Corizon Health, Inc.</i> , 993 F.3d 773, 740 (9 <sup>th</sup> Cir. 2021).
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20	192 The DIR provided stated that "A business's main purpose is operating a warehouse and incidental thereto employs a separate sales staff to sell goods. IWC Order 9 covers this operation even though sales are covered under IWC Order 7 because the main purpose of	Exhibit 68, P. 4	Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Improper legal conclusion. Or. MSJ § C(1)(b).</i>
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1	the business is to operate a warehouse.”		
2	193 The DIR stated that determining the nature of a company is not about auditing receipts to compare income from sales and service, but by using “simple observation and common sense.”	Exhibit 68, P. 5.	Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Improper legal conclusion. Or. MSJ § C(1)(b).</i>
3	194 Defendants contracted with Plaintiff, not Kenzieland or Lola March LLC, in the Agreements	Exhibit 49: Lew Deposition 138:1-139:25	Undisputed.  (Agreements are at Exs. 64 and 66.)
4	195 The Addendum to the Performance Agreement dates November 10, 2020 only extended the time for the effectiveness of the Performance Agreement and still categorized Plaintiff as a “model.”	Exhibit 65	Disputed.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Vague as to “extended the time for the effectiveness” and “categorized.” Misstates evidence. Throughout the Agreement, Plaintiff is referred to as a “Performer,” “actor,” and “model.” Additionally, Section 2 addressed “compensation” and Section 7.1 addressed nature of the services.</i>
5	196 The Addendum to the Performance Agreement dates July 13, 2021 only extended the time for the effectiveness of the Performance Agreement and	Exhibit 67	Disputed in part.  <i>Statement is compound. Or. MSJ § C(1)(b), § C(4)(b). Vague as to</i>

1	still categorized Plaintiff as a “model.”		“extended the time for the effectiveness” and “categorized.” <i>Misstates evidence.</i> Throughout the Agreement, Plaintiff is referred to as a “Performer,” “actor,” and “model.”	
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8	197	Plaintiff entered into numerous agreements entitled “18 U.S.C Section 2257 Records Keeping for Models” with Defendants.	Exhibit 72	Undisputed.
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10	198	Plaintiff was categorized as a model, not an actress or performer, in all of the documents entitled “18 U.S.C Section 2257 Records Keeping for Models”	Exhibit 72	Disputed in part.  <i>Vague</i> as to “categorized.” <i>Improper legal conclusion.</i> <i>Or. MSJ</i> § C(1)(b). While the title “model” was used as shorthand, it is merely a stylistic convention and does not designate any meaningful status on Plaintiff.
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18	199	The relationship between Chris Applebaum and Defendants extended past just being a director for Plaintiff. Vixen and Chris Applebaum’s collaboration extended to Chris Applebaum’s own company, “Eats.”	Exhibit 75; Exhibit 52 Thoma Deposition 58:5-8	Disputed in part.  <i>Statement is compound.</i> <i>Or. MSJ</i> § C(1)(b), § C(4)(b). <i>Vague</i> as to “relationship” and “collaboration.”
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24	200	The Performance Agreement dated July 13, 2021 forbids Plaintiff from shooting anal scenes with other companies until three months after	Exhibit 66; Exhibit 49 Lew Deposition 116:8-119:14	Disputed in part.  <i>Vague</i> as to meaning of “forbids.” Witness testified that “first
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1	Plaintiff filmed the shoot or until the agreement expired.		right of refusal is not necessarily a restriction or prohibits her . . . .” (Ex. 49) 117:12–4. (Ex. 66) <i>Lacks pincite. See L.R. 56-2. Misstates evidence.</i> The relevant provision states, “Performer will afford Producer the right of first refusal for Performer’s first anal scene (‘First Anal Scene’) and will not shoot any anal scene with any other producer or company until she has filmed the First Anal Scene with Producer or the Term has expired, whichever is first. Additionally, Performer will remain exclusive for anal only, for three months from the date that Producer shoots Performer’s First Anal Scene . . . .” (Ex. 66) at § 7.1 (italicizations added).
201	The Addendum to the Performance Agreement One dated April 15, 2021 expands on the exclusivity clause found within the November 10, 2020 agreement, stating “Additionally, Performer may	Exhibit 66	Disputed in part.  <i>Pincite is incorrect.</i> <i>See L.R. 56-2.</i> Discussed at Ex. 65.

		not film with any models that appear in any of the Scenes arising from the Agreement for at least six months from release of the Scene and Performer agrees not to shoot with any of the Company's current and/or former directors and/or exclusive talent for Performer's Channels without the express written consent of Producer with the exception of Chris Applebaum. Company's current exclusive talent, as of the date of signing, are listed on Exhibit A, and for the avoidance of doubt, Performer may also not shoot with any new exclusive talent signed by Company for Performer's Channels during the course of this Agreement."		
16	202	Chris Applebaum was Defendants' employee.	Exhibit 66, Section 7.1 paragraph 2; Exhibit 75; Exhibit 52 Thoma Deposition 58:5-8	Disputed.  <i>Improper legal conclusion. Or. MSJ § C(1)(b). Mr. Applebaum performed services for Defendants as an independent contractor through his company Eatz. Vague as to use of term "employee." (Ex. 66) Pincite is incorrect. See L.R. 56-2. Evidence does not support statement. This merely cites to</i>

1			Plaintiff's Agreement. <i>Misstates evidence.</i> Agreement concerns Plaintiff, not Mr. Applebaum. (Ex. 52) <i>Evidence does not support statement.</i> Merely states that Plaintiff knew Mr. Applebaum.
2	203	Michael Mosny described Defendants as an online entertainment company, not a Motion Picture company.	Exhibit 76; Deposition of Michael Mosny 44:16-21

Dated: January 10, 2025

KANE LAW FIRM

By: /s/ Brad Kane

Brad S. Kane

Attorney for Defendants

Dated: January 10, 2025

BIBIYAN LAW GROUP, P.C.

By: /s/ Rafael Yedoyan

Rafael Yedoyan

Attorney for Plaintiff

## **CERTIFICATE OF SERVICE**

I, Brad S. Kane, hereby certify that this document has been filed on January 10, 2024, through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

Dated: January 10, 2025

By: /s/ Brad S. Kane  
Brad Kane

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